


SO ORDERED.

SIGNED this 17th day of September, 2020.




LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:)
)
MARY FRANCES HARGETT) **CHAPTER 13**
) **CASE NO. 19-51280**
)
Debtor.)

**CONSENT ORDER RESOLVING OBJECTION TO
AMENDED MORTGAGE CLAIM NO. 9**

THIS CAUSE comes on before the Court upon the Debtor's Objection To Amended Mortgage Claim No. 9 (the "Objection") filed herein by Citibank, N.A. as trustee for DMLTI Asset Trust ("Citibank"), which Objection asserts that the property taxes set forth in Amended Claim No. 9 are overstated, thereby improperly increasing the monthly escrow payment due by the Debtor for 2019/2020, inflating the current monthly payment due from the Debtor effective December 22, 2019 and overstating the pre-petition arrears owed by the Debtor on her mortgage as of the petition date.

Citibank's investigation into the matter raised by the Objection has determined that the annual property taxes owed for an unrelated piece of real property have in fact previously been charged to the Debtor's escrow account and is in the process of obtaining the Debtor's annual Escrow Analysis Statements for prior years to determine the total refund due the Debtor for all amounts paid by her to-date on the other property's tax bills.

In the meantime, Citibank has re-run the Debtor's Annual Escrow Analysis done in December 2019, giving her credit for the tax overpayment during 2019 and re-calculating her monthly escrow payment/total monthly payment effective December 22, 2019 based on same. CitiBank is also in the process of amending Claim No. 9 to reflect the pre-petition arrears owed by the Debtor on her mortgage after taking into account the tax overpayment(s) in question.

Under these circumstances, the parties have agreed to resolve the Objection on the terms set forth herein, to which the Trustee has no objection, as evidenced by their respective signatures set forth below. After having reviewed the Objection and the record in this case, the Court hereby approves the proposed settlement.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. That the Objection is hereby sustained.
2. That the Debtor's post-petition monthly conduit mortgage payment effective December 22, 2019 is determined to be \$331.66, and the Trustee is authorized to pay Citibank the same until such time as Citibank duly files a Notice of Mortgage Payment Change herein.
3. That the Trustee is authorized to delay any payment to Citibank with respect to the pre-petition arrears shown on Amended Claim 9 until such time as Citibank completes its investigation into how long the tax overpayment by the Debtor has been occurring and (i) properly credits the Debtor's account with the total overpayment amount and (ii) files a further amended Claim 9 to reflect the amended outstanding balance and amended arrears due as of the petition date after same.
4. That Citibank shall reimburse the Debtor's counsel for a reasonable attorney's fee of \$400 in connection with filing the Objection, which shall be paid in-hand to the Debtor's counsel no later than 5:00 p.m. on September 30, 2020.
5. That this Consent Order is not intended to be determinative of the outstanding balance due and/or arrears owed by the Debtor as of the petition date, if any, which Citibank will recalculate and file a further amended Proof of Claim for after crediting the Debtor's account with all tax overpayments it ultimately determines have been erroneously charged to the Debtor's account since the inception of the Debtor's mortgage loan in 2004.
6. That this Consent Order shall have no preclusive effect on any subsequent motion or other legal action by the Debtor with respect to Citibank or its servicer, Fay Servicing, relating to the tax overpayments in question.
7. That time is of the essence as to each and all of the provisions of this Consent Order.
8. That this Court shall, and hereby does, retain jurisdiction over this matter, the parties hereto, and the subject matter hereof, to the extent permitted under applicable law, for the entry of such other and further orders as are either necessary or appropriate to accomplish the foregoing.

END OF DOCUMENT

SIGNATURES ON FOLLOWING PAGE

CONSENTED TO AND ACCEPTED:

KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.

By: /s/ Pamela P. Keenan

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NO OBJECTION

By: /s/ Kathryn L. Bringle

Kathryn L. Bringle

Chapter 13 Trustee

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PARTIES TO BE SERVED
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